

Message Text

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FODAG, USIAEA, UNIDO, NESCO, ICAO,

E.O. 11652: N/A

TAGS: UN, AORG

SUBJECT: UN ADMINISTRATION: TAXATION OF LUMP SUM PENSIONS
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REF: (A) USUN 2936, (B) STATE 150248 (NOTAL)

LONDON FOR SHIPPING ATTACHE

1. AS ADDRESSEES ARE AWARE, QUESTIONS RAISED AS TO THE
LEGALITY OF REIMBURSING NATIONAL TAXES PAID BY RETIRED

OR RETIRING STAFF OF INTERNATIONAL ORGANIZATIONS ON LUMP SUM PENSION PAYMENTS CAUSED THE DEPARTMENT TO REVIEW THE ENTIRE TAX REIMBURSEMENT AGREEMENT QUESTION. IN CONNECTION WITH THAT REVIEW INFORMATION WAS REQUESTED AS TO THE PRACTICE OF OTHER UNITED NATIONS MEMBER COUNTRIES AS TO THEIR PRACTICE ON THAT ISSUE.

2. ON JUNE 8 THE UNITED NATIONS REQUESTED THAT THE DEPARTMENT FURNISH ITS CONCLUSIONS ON THIS MATTER.

3. IN RESPONSE TO THIS SPECIFIC REQUEST FROM THE UNITED NATIONS THE DEPARTMENT PROVIDED ITS CONCLUSIONS ON THIS MATTER UNDER COVER OF REFTEL B THE TEXT OF WHICH IS REPEATED BELOW:

BEGIN QUOTE: IT WOULD NOT BE LEGALLY APPROPRIATE TO USE THE TAX EQUALIZATION FUND TO REIMBURSE EMPLOYEES OF THE UN FOR NATIONAL TAXES ON ONE-THIRD LUMP SUM PENSION PAYMENTS, FOR FOLLOWING REASONS:

A. TAX EQUALIZATION FUND WAS ESTABLISHED IN UNGA RESOLUTION 973 (X), WHICH PROVIDED, INTER ALIA, THAT THERE QUOTE SHALL BE CHARGED AGAINST THE CREDITS OF MEMBER STATES AMOUNTS PAID UNDER RESOLUTION C (OF RES. 973) BY WAY OF DOUBLE TAXATION RELIEF IN RESPECT OF NATIONAL INCOME TAXES. UNQUOTE. RESOLUTION C PROVIDES, INTER ALIA: QUOTE WHERE LIMITED OFFICIAL USE

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A STAFF MEMBER IS SUBJECT BOTH TO STAFF ASSESSMENT UNDER THIS PLAN AND TO NATIONAL INCOME TAXATION IN RESPECT OF THE SALARIES AND EMOLUMENTS PAID TO HIM BY THE UNITED NATIONS, THE SECRETARY-GENERAL IS AUTHORIZED TO REFUND TO HIM THE AMOUNT OF STAFF ASSESSMENT COLLECTED FROM HIM PROVIDED THAT:

(1) THE AMOUNT OF SUCH REFUND SHALL IN NO CASE EXCEED THE AMOUNT OF HIS INCOME TAXES PAID AND PAYABLE IN RESPECT OF HIS UNITED NATIONS INCOME;

(2) IF THE AMOUNT OF SUCH INCOME TAXES EXCEED THE AMOUNT OF STAFF ASSESSMENT, THE SECRETARY-GENERAL MAY ALSO PAY TO THE STAFF MEMBERS THE AMOUNT OF SUCH EXCESS;

(3) PAYMENTS MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE SHALL BE CHARGED TO THE TAX EQUALIZATION FUND.

B. RESOLUTION ONLY PROVIDES AUTHORIZATION FOR REIMBURSEMENTS WHERE THE STAFF MEMBER IS SUBJECT TO BOTH STAFF ASSESSMENT AND TO NATIONAL INCOME TAXATION IN RESPECT OF THE SALARIES AND EMOLUMENTS PAID TO HIM BY THE

UNITED NATIONS, IN ORDER TO AVOID DOUBLE TAXATION.

C. IT IS OUR UNDERSTANDING THAT 1/3 LUMP SUM PENSION PAYMENTS ARE COMPUTED ON THE BASIS OF GROSS SALARY AND HAVE NOT BEEN SUBJECT TO STAFF ASSESSMENT. ACCORDINGLY, IMPOSITION OF A U.S. TAX WOULD NOT SEEM TO CONSTITUTE A DOUBLE TAX.

D. THE RESOLUTION ONLY APPLIES WHERE THE NATIONAL TAX IS IMPOSED ON "SALARIES AND EMOLUMENTS PAID TO HIM BY THE UNITED NATIONS." THIS PHRASE IS DRAWN FROM ARTICLE 18(B) OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS. THE LEGISLATIVE HISTORY OF THE STAFF ASSESSMENTS PLAN AND THE LIMITED OFFICIAL USE

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REIMBURSEMENT PRACTICE BOTH CLEARLY INDICATE THAT THEY WERE DESIGNED TO ENSURE TO EMPLOYEES WHO WERE NATIONALS

OF A STATE WHICH HAD NOT ADHERED TO ARTICLE 18(B) THE BENEFITS OF ARTICLE 18(B).

E. IT DOES NOT APPEAR THAT THE PHRASE "SALARIES AND EMOLUMENTS" IN ARTICLE 18(B) WAS INTENDED TO INCLUDE 1/3 LUMP SUM PENSION PAYMENTS.

(1) THE NEGOTIATING HISTORY OF THE CONVENTION CONTAINS THE FOLLOWING REPORT: "THE SUB-COMMITTEE EXAMINED ANOTHER PROPOSAL SUBMITTED BY THE ADVISORY GROUP OF EXPERTS ON ADMINISTRATIVE AND BUDGETARY MATTERS, WITH A VIEW TO EXEMPTING ALL MEMBERS OF THE STAFF OF THE ORGANIZATION FROM TAXATION ON RETIREMENT BENEFITS AND EXEMPTING THEIR BENEFICIARIES FROM TAXATION ON DEATH BENEFITS, EITHER IN THE FORM OF A LUMP SUM OR BENEFITS PAID BY THE ORGANIZATION TO WIDOWS AND ORPHANS. THE SUB-COMMITTEE DECIDED WITHOUT PREJUDICE TO THIS QUESTION BEING TAKEN UP AND CONSIDERED SEPARATELY AT A LATER STAGE, THAT A PROVISION TO THIS EFFECT SHOULD NOT BE INCLUDED IN THE GENERAL CONVENTION".

(2) TO OUR KNOWLEDGE, THE QUESTION WAS NOT SUBSEQUENTLY CONSIDERED. TAX EXEMPTION WAS ACCORDED IN ARTICLE 18(B) BECAUSE OF THE INTERNATIONAL CHARACTER OF THE STAFF OF THE UNITED NATIONS AND IN ORDER TO MINIMIZE NATIONAL INFLUENCE ON EMPLOYEE DECISIONS. AFTER SEPARATION FROM SERVICE WITH THE UNITED NATIONS, THE RATIONALE FOR CONTINUING TAX EXEMPTION DOES NOT SEEM TO APPLY.

(3) THERE IS NOT A LONG-STANDING PRACTICE OF REIMBURSE-
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MENT FOR TAXES ON 1/3 LUMP SUM PENSION PAYMENTS.

ALTHOUGH THE UNITED NATIONS AUTHORIZED THE OPTION OF CHOOSING 1/3 LUMP SUM PAYMENTS IN 1949, NO REIMBURSEMENTS WERE MADE UNTIL 1974. MOREOVER, IT IS OUR UNDERSTANDING THAT SEVERAL SPECIALIZED AGENCIES HAVE CHALLENGED THE APPROPRIATENESS OF THIS REIMBURSEMENT AND NOT MADE SUCH REIMBURSEMENTS.

(4) OUR CONTACTS WITH SEVERAL OTHER STATES' PARTIES TO THE CONVENTION INDICATE THAT THEY DO NOT INTERPRET ARTICLE 18(B) TO EXEMPT 1/3/ LUMP SUM PENSION PAYMENTS.

F. THUS, OUR PRELIMINARY CONCLUSION IS THAT THE TEF SHOULD NOT BE USED TO REIMBURSE TAXES ON 1/3 LUMP SUM PENSION PAYMENTS BECAUSE (A) TAX ACTION DOES NOT CONSTITUTE A "DOUBLE-TAXATION"; AND (B) 1/3 LUMP SUM PENSION PAYMENTS SHOULD NOT BE CONSIDERED "SALARIES AND EMOLUMENTS" FOR PURPOSES OF ARTICLE 18(B) OF THE

CONVENTION OR RES. 973 (X), PART C. UNQUOTE

4. REFTTEL A REPORTS THE UN SECRETARY-GENERAL'S DIRECTIVE SUSPENDING TAX REIMBURSEMENTS OF NATIONAL TAXES PAID ON ONE-THIRD LUMP SUM PENSION PAYMENTS.

5. THE DEPARTMENT WILL PROVIDE FURTHER GUIDANCE AFTER THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL HAS RESPONDED TO THE REQUEST FOR AN ADVISORY OPINION. MEANWHILE, MISSIONS MAY INFORMALLY COMMUNICATE U.S. LEGAL OPINION TO INTERESTED AGENCIES. VANCE

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